AMERICAN BAR ASSOCIATION

STANDING COMMITTEE **Law and National Security**
INTELLIGENCE REPORT

Volume 6, Number 7 | John Norton Moore, Chairman | July 1984

Senate/House Hold Hearings On Anti-Terrorism Bills

The Senate Judiciary Subcommittee on Security and Terrorism on June 5 and 6 heard testimony on the four anti-terrorist bills—S. 2623, S. 2624, S. 2625 and S. 2626—which President Reagan had sent to Congress on March 6. The exercise was repeated before the House Foreign Affairs Committee on June 13, and before the House Foreign Affairs Subcommittee on International Security and Scientific Affairs, and Subcommittee on International Operations on June 7 and 19.

S. 2623, the Aircraft Sabotage Act, is designed to implement the obligations assumed by the United States when it ratified the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation on November 1, 1972, in Montreal. Specifically, this Convention obligates the contracting parties to assume criminal jurisdiction over persons who have destroyed or sabotaged an aircraft, even when the act of terrorism was committed elsewhere and not against that country's aircraft.

S. 2624 is designed to implement our adherence to the International Convention Against the Taking of Hostages, which was adopted by the United Nations on December 17, 1979. The pending legislation would amend the federal kidnapping statute in a manner which would provide for federal jurisdiction over any kidnapping in which "a threat is made to kill, injure or continue to detain [a] person in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the person."

S. 2625, Act for Rewards for Information Concerning Terrorist Acts, offers sizable rewards for information concerning a broad range of terrorist activities. The maximum reward is $500,000. However, there is a provision that any reward of $100,000 or more would have to be approved by the president or his designee. Those providing information under the terrorist reward program would be eligible for protection under the witness security program.

S. 2626, Prohibition Against the Training or Support of Terrorist Organizations Act of 1984, was designed to deal specifically with cases such as that of former CIA employee Edwin Wilson.

The first three measures turned out to be non-controversial. Indeed, witnesses for the American Civil Liberties Union said that these three bills "appear to be responsible efforts to address real problems." However, there was spirited debate, based on first amendment grounds, over the constitutionality of S. 2626, as drafted. In presenting the legislation on behalf of the Department of Justice, Victoria Toensing, deputy assistant attorney general, Criminal Division, said that she considered S. 2626 "the most important bill in the pack-

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Annual Meeting Program Debate on War Powers Resolution

The **Standing Committee on Law and National Security** will present a debate on the topic: "Is the 1973 War Powers Resolution an unconstitutional infringement of presidential powers?" The program will take place on Monday, August 6, between 2 and 5 p.m., in Columbus C and D, East Tower, Ballroom Level, of the Hyatt Regency Chicago.

Taking the affirmative in challenging the constitutionality of the Resolution will be:

Professor John Norton Moore, Walter L. Brown Professor of Law and Director of the Center for Law and National Security, University of Virginia School of Law.

Robert F. Turner, Principal Deputy Assistant Secretary of State for Legislative and Intergovernmental Affairs; author of *The War Powers*

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Hearings on Anti-Terrorism Bills

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age." She argued that the bill's primary purpose "is to deny valuable services from American nationals to those terrorist groups which practice their terrorism against this nation's interests...." She said that S. 2626 does not prohibit mere association; "it forbids only non-verbal action on behalf of a terrorist group." She emphasized repeatedly that the bill is aimed at *conduct* —"conduct which directly facilitates terrorist activities. The bill is not intended to reach first amendment protected expressions of sympathy or moral support." Ms. Toensing's assurances, however, were undercut by the provision which gave the secretary of state "conclusive" responsibility for listing terrorist groups and organizations by publishing a determination in the *Federal Register*. This provision, as well as some other overbroad language in the legislation, initially drew criticism from Senator Metzenbaum, a member of the Senate Subcommittee on Security and Terrorism. Senator Denton and Senator Hatch were both inclined to agree with Senator Metzenbaum's criticism, and they drew from the Department of Justice witnesses an agreement to attempt to rewrite the language in a more acceptable manner.

Secretary of State Shultz, who testified before the House Committee on Foreign Affairs on June 13, pointed out that, of the 500 attacks by international terrorists which took place during the course of 1983, some 200 were directed against the United States. This was only part of the problem, he said, because there were at least as many threats and hoaxes. A particularly disturbing trend, said the secretary, is the extent to which the agencies of foreign states are engaged in acts of international terrorism. Terrorism, he said, is "no longer the random acts of isolated groups of local fanatics. Terrorism is now a method of warfare, no less because it is undeclared and (even though not always) denied."

Mr. Shultz tabulated the progress that had been made in dealing with the threat of terrorism. Among other things he said that we have added more resources to intelligence collection and we have strengthened cooperation with other governments; that we are carrying out security enhancement programs at all of our high-threat posts; that we have a comprehensive plan to protect foreign officials in major U.S. cities; and that we are actively seeking to improve our capabilities to prevent attacks against our interests abroad. He noted that the London summit declaration committed the participating nations to "closer cooperation and coordination between police and security organizations and other relevant authorities, especially in the exchanges of information, intelligence and technical knowledge."

Secretary of State Shultz was frank in admitting that there are still gaps in our anti-terrorist defenses. He said that the legislation before Congress would not fill all of those gaps but would fill some of them.

Speaking for the ACLU, Joseph M. Hassett and Jerry Berman said that if it is the intention of the administration to enact legislation to prohibit technical assistance for the purpose of aiding terrorist acts, "it is no great task to draft legislation that so provides, yet does not sweep within its ambit protected activity engaged in for wholly legitimate purposes...." Specifically, they found fault with the looseness of the language which prohibited action "in concert with" any faction, group or government agency; with the language that prohibited "training in any capacity" to the designated faction, group or government agency, with the language which prohibited the provision of any "logistical, mechanical, maintenance or similar support services" to the designated group; and with the legislation's provision giving the secretary of state broad discretion "to make a conclusive determination as to which countries or factions should be subject to the bill."

At the moment of writing, we learn that S. 2623 and S. 2625 have been favorably reported by the Senate Subcommittee on Security and Terrorism and by the full Senate Judiciary Committee. On the House side, further consideration of the administration's anti-terrorism bills has been postponed until after the July recess.

Debate on War Powers Resolution

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Resolution: Its Implementation in Theory and Practice (1983).

On the negative side of the debate, arguing that the War Powers Resolution is not in conflict with the Constitution, will be:

The Honorable Thomas F. Eagleton, United States Senator; member of the Senate Governmental Affairs, Labor and Human Resources, and Appropriations Committees, and the Select Committee on Ethics; author of several war powers articles.

Professor Michael J. Glennon, University of Cincinnati College of Law; former counsel to Senate Foreign Relations Committee; co-author of *United States Foreign Relations Law*.

The debate will be moderated by **Morris I. Leibman**, who chairs the ABA's Advisory Committee to the Standing Committee on Law and National Security.

Correction

In the June issue of *Intelligence Report*, the second last line in the "Commentary" column spoke of "national security legislation." This should have read "national security education."

Commentary

By Craig H. Baab

Mr. Baab is the staff director for governmental liaison of the ABA Governmental Affairs Group, Washington, D.C.

Congress overcame its early spring lethargy by acting on a host of measures before it adjourned June 29 for the July 4th/Democratic National Convention recess period. Much of this action was prompted by the press of time. When Congress reconvenes July 23, the Senate will be in session only 42 days and the House only 37 days until the scheduled October 4 adjournment for the national elections.

Among consideration of deficit reduction and immigration reform, assorted appropriations bills and a national minimum drinking age, Congress considered two important measures with long-term ramifications for the relations between the United States and the Soviet Union. In both instances, the action taken is but a prelude to future, more definitive action required by Congress and the president.

On May 22 the House of Representatives and on June 15 the Senate unanimously adopted H. Con. Res. 226, expressing the sense of the Congress against the persecution of members of the Bahai religion by the government of Iran. The resolution is based on public reports of the execution without judicial process of over 170 men and women of the Bahai faith and of the Iranian government's branding as criminal adherence to that faith. Shrines and cemeteries have been violated, property rights ignored or revoked without judicial process and the government has ordered employers of Bahais not to pay them their wages. These officially-sanctioned acts are as pervasive as they are troubling.

As Senator Nancy Kassebaum (R-Kans.) noted in expressing her support for the resolution, "From time to time, history has witnessed the kind of intolerance and genocide that the present Iranian regime is visiting upon its own Bahai population....This issue is of concern to all people of all religious faiths. Persecution against any one group affects us all, for it is all too easy for any one of us to become the next victim if we only stand by while the rights of others are abused." Senator Rudy Boschwitz (R-Minn.) echoed this theme when he noted that, "The situation has reached the point where, as the distinguished ranking member of the Senate Foreign Relations Committee, Senator Pell, has observed, the word 'persecution' has arguably been supplanted by the word 'genocide'." This theme was not solely expressed by Republicans, as Senator Christopher Dodd (D-Conn.) echoed, "There is a word for this kind of wholesale atrocity. The word is 'genocide'."

This action reflects a broader concern, as expressed June 5 by Foreign Relations Committee ranking minority member Clayborne Pell (D-R.I.). During committee consideration of the Bahai resolution, Pell observed that what is occurring is very close to genocide. It is a "very dreadful" situation, he continued, and seeing this raises the question of the Genocide Convention. Pell said that he really hopes and believes that the Senate should consider the Convention, and act on it in this Congress. Pell also noted that the American Bar Association now is in favor of ratification and that it is very hard to find anybody who is opposed to it.

Recent months have witnessed a growing call within the Senate for a formal public endorsement by the president of the need to ratify the Genocide Convention. Ratification of this 35-year-old treaty is considered one of the important legislative priorities of the American Bar Association. Professor John Norton Moore, chairman of the Standing Committee on Law and National Security, has emphasized the importance of ratification by noting that it would strengthen the hand of the U.S. in its ongoing meetings at the Conference on Security and Cooperation in Europe. On various occasions U.S. criticisms of the Soviet Union and other Eastern bloc nations for failure to implement the provisions of the Helsinki Accords are met with a rebuttal to the effect that the U.S., having failed thus far to ratify the Genocide Convention, is hardly in a position to criticize the human rights policies of other nations.

Ambassador Max Kampelman, a member of the Standing Committee, reiterated this point earlier this year in a speech to the Standing Committee by observing that his Soviet counterparts did not hesitate to raise U.S. failure to ratify the Genocide Convention as a defense of their actions in violation of the Helsinki Final Act. An earlier example of this Soviet tactic was noted on the day following the December 1981 hearing on the Genocide Convention before the Senate Foreign Relations Committee. At that time, an article in *Tass* claimed that "the United States' refusal to ratify the International Convention on Genocide and 15 other similar documents on human rights out of the 19 worked out by the U.N. cannot be assessed in any other way than as Washington's unwillingness to assume firm juridical commitments in the sphere of the insurance of human rights."

The continuing violation by the Soviet Union of the provisions of the Helsinki Accords and its refusal to abide by other international legal norms concerning the rule of law was the subject of another issue before Congress on June 29. On that day the Senate adopted H. Con. Res. 332, previously approved by the House of Representatives "that the Union of Soviet Socialists Republics should provide the signatories of the Helsinki Final Act with specific information as to the whereabouts, health, and legal status of Andrei Sakharov and [his wife] Yelena Bonner." Speaking in support of the resolution before its approval were Majority Leader

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Howard Baker (R-Tenn.) and Senators Charles Grassley (R-Iowa), Russell Long (D-La.), Christopher Dodd (D-Conn.) and Howard Metzenbaum (D-Ohio). Although the Senate approved the resolution, final action on it was delayed until the Senate returns at the end of July so as to permit all senators to formally record their support for the resolution.

The unanimous actions by the Senate condemning the apparent Iranian genocide of the Bahai and criticizing the Soviet Union for its failure to abide by the provisions of the Helsinki Final Act in its treatment of Dr. Sakharov and his wife provide continuing evidence that prompt U.S. ratification of the Genocide Convention is in the national interest and in this nation's interest internationally. The secretary of state reportedly has recommended that the administration ratify this treaty with the understandings and the declaration previously approved by the Justice and State Departments and by the Senate Committee on Foreign Relations. A strong White House endorsement now would be timely. The American Bar Association and others favoring continued strong United States objection to the Soviet Union's practice of violating international norms of legal process and of human rights would applaud such action.

Senate Approves Risk Reduction Centers

The Senate recently addressed another issue of significance concerning United States-Soviet relations. On the 1st of February this year, Senators Nunn (D-Ga.) and Warner (R-Va.) introduced, with 30 cosponsors, S. Res. 329, calling on the U.S. to initiate with the Soviet Union discussions leading to the establishment of nuclear risk reduction centers to help avoid accidental nuclear war. The resolution urges the president to pursue negotiations with the Soviet Union on various other "confidence building" measures. Although discussions already are underway with Soviet representatives to upgrade the "hotline" between the two nations, S. Res. 329 urges the president to supplement that current link with risk reduction centers, located in Moscow and Washington, which are equipped to communicate by facsimile as well as voice with the ambassadors and other top policy makers in both capitals. The resolution grew out of the Working Group on Nuclear Risk Reduction chaired by Nunn and Warner. The resolution is premised on the need to establish means of detecting terrorist activities by third parties which could prompt an inadvertent nuclear exchange.

When the Senate debated the Department of Defense authorization bill, S. Res. 329 was proposed as an amendment, but subsequently passed as a separate measure 82-0. The ABA favors proposals such as that advocated by Senators Nunn and Warner, having adopted in August 1982 a resolution calling upon the nuclear powers to "further pursue the development of agreements facilitating communication and coordination in order to reduce the possibility of nuclear war through error or misunderstanding." Senator Nunn emphasized during Senate debate, "There are an increasing number of circumstances that could precipitate the outbreak of nuclear war that neither side anticipated nor intended, possibly involving other nuclear powers or terrorist groups."

Court Protects CIA Files On Albanian Covert Operations

In a recent case (Miller v. Casey, U.S. Court of Appeals for the District of Columbia, Civil Action No. 82-01100, March 16, 1984), a unanimous court refused to overturn a lower court's denial of the appellant's FOIA request to the CIA for—

> All information on attempts by the U.S., U.K., and other western countries to infiltrate intelligence agents and potential guerrillas into Albania during the period between the end of World War II and the death of Stalin in 1953, including but not limited to those operations apparently betrayed to the Russians by Kim Philby.

The CIA responded to that request as follows:

> I must advise you that the fact of the existence or nonexistence of any documents which would reveal a confidential or covert CIA connection with or interest in matters relating to those set forth in your request is classified pursuant to Executive Order 12065. Further, the fact of the existence or non-existence of such documents would directly relate to information Central Intelligence has the responsibility to protect from unauthorized disclosure....Accordingly, pursuant to exemptions (b)(1) and (b)(3) of the FOIA, your request is denied to the extent that it concerns any such documents. By this statement we are neither confirming nor denying that any such documents exist.

The court's opinion stated as follows:

> Information may be classified when its unauthorized disclosure "either by itself or in the context of other information, reasonably could be expected to cause damage to the national security." A presumption of damage to the nation's security arises from unauthorized disclosure of intelligence sources or methods.

The CIA claimed that it would damage both the national security and U.S. foreign relations if it revealed whether the sought-after documents

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Civil Liberties and National Security

Summary of debate between Morton Halperin, ACLU, and John Norton Moore, chairman, Standing Committee on Law and National Security, held at the Center for the Study of Democratic Institutions, Santa Barbara, California, on May 21.

In his opening remarks, Professor Moore made it clear that he considered the protection of civil liberties in many ways to be as important as the protection of the national security. He said that "such liberties and freedoms are central tenets of a democratic system and indeed inherent in its genius." However, he argued that "national security concerns are also of fundamental importance in the protection of our democratic system and freedoms," and "there is no magic wand for resolving conflicts between these important truths." He presented a long list of subjects—a preliminary list—to illustrate the diversity and complexity of the issues confronting us in the field of civil liberties and national security. Among these issues were:

- Issues concerning freedom of expression, ranging in turn from prior restraint on publication through criminal penalties on leakers and/or the press.
- Issues concerning the operation of the classification system.
- Issues concerning public access to information, including the interface of the Freedom of Information Act with sensitive defense and intelligence communities and the constitutional concept of executive privilege.
- Issues concerning guidelines for domestic security investigations and the maintenance of employee security.
- Issues concerning the role of human rights concerns in foreign policy.

Speaking generally, Professor Moore argued that "the potential consequences to the nation in national security/civil liberty settings may be—but will not always be—considerably more severe than the consequences in other civil liberty settings." He pointed out that the Supreme Court and other federal courts have shown substantial deference to national security concerns and are likely to continue to do so. "The courts," he said, "have upheld denials of passports based on area restrictions and individual activities, provided injunctions and damages to enforce secrecy agreements as a condition of employment by the intelligence community, have upheld the classification system, have upheld warrantless wiretaps in national security investigations concerning foreign intelligence...have upheld the espionage laws, have upheld an oath of office to oppose the overthrow of the government by force or illegal means, have strongly implied that reasonably drawn criminal sanctions would be appropriate against disclosure of sensitive classified information." The courts, however, he said, have not hesitated to rule against national security claims "in settings where they were not convinced of the seriousness of the national security threat in relation to the importance of the freedom at stake." As examples of the latter he mentioned the court's decision in the case of the *Pentagon Papers* and the decision in *Kent* v. *Dulles*, which involved the denial of a passport.

Professor Moore argued that secrecy is essential to the effective conduct of intelligence and to many other aspects of national security operations. "Secret activities," he said, "and intelligence agencies are and should be subject to review by a democratically elected president and Congress—subject always to appropriate sensitivities, rooted in the separation of powers. Efforts to preempt this democratic process by unilateral nonofficial leaks are inherently undemocratic. Illegal activities must, of course, always be reportable, as is abundantly the case in present law. But efforts to subvert policies through leaks of sensitive classified information because of individual differences may unilaterally remove the options of the majority and thus undercut the ability of our society to formulate choices through the democratic process. The appropriate way to change policy is through change in elected officials, not through leaks of sensitive classified information."

Professor Moore said that "the United States remains the foremost country in the world in recognizing civil liberties in national security contexts and the role of the courts in policing them." He noted that other democratic nations have far more national security constraints on the flow of information than the United States, and that no other nation in the world applies a Freedom of Information Act to its own intelligence community. He said that, while the Reagan administration showed greater deference than the Carter administration to the requirements of intelligence and national security, "the Reagan administration security orders remain the second most liberal in American history—only less liberal than the Carter administration."

Professor Moore spoke at length about the worsening national security threat during the decades of the 1980s and 1990s. He spoke of the massive buildup in Soviet intermediate nuclear systems in the European theater, of the invasion of Afghanistan, of the greater Soviet willingness to expand its influence in Central and Latin America, of the use of toxin weapons in Southeast Asia and Afghanistan, of the tremendous increase in international terrorism, especially state sponsored terrorism. "Based on the worsening national security climate," he said, "and the enhanced protection of national security/civil liberties over the past decade, I believe that by far the greatest threat is the risk posed by external threats to our society." He said that in his judgment it was wrong to apply the Freedom of Information Act to our

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Civil Liberties and National Security

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intelligence community. However, accepting that this situation would not soon change, he said that he fully supports "incremental efforts for relief such as the ABA call for substantial relief from the extraordinary provisions for *de novo* review of agency FOIA decisions, or the current bills exempting operational files of the CIA from FOIA."

In his closing remarks, Professor Moore posed the question: "If there are indeed important principled reasons for secrecy in some areas, how do we develop a principled structure of laws to protect that secrecy while minimizing any effects on important civil liberties?"

Mr. Halperin said that he agreed that the United States was currently confronted by a serious threat to its national security. However, he said, "I am inclined to think that the threat of Nazi Germany was a greater threat to the survival of Western democracy than we now face." He said that over the past 10 years he had met with officials of every Justice Department that would have such a meeting, urging that the United States adopt a sensible espionage law.

"I agree that the stakes on the national security side are sometimes greater than letting a specific criminal go free," said Mr. Halperin. "They [the stakes] may be nuclear war. But I would also argue that on the other side the stakes may be higher than not simply convicting one person who ought to be set free...national security functions must be limited by civil liberties concerns, as are all other functions of the government."

Mr. Halperin argued that most abuses of government power and government secrecy "come almost always from presidents, rather than from career officials in intelligence agencies...I would point to FDR's orders to the FBI to investigate those who wanted to keep us out of the European war; John Kennedy's orders to the FBI to investigate the sugar industry; LBJ's orders to the FBI to spy on people at the 1964 convention." The law enforcement agencies as well as democracy itself suffers from such practices, he said, because they end up taking the blame for what the president orders them to do.

Mr. Halperin expressed the belief that many of those who sought to tighten up on our national security procedures were motivated by "a genuine concern to deal with their responsibilities." He recognized "that at least in some cases...the stakes can be enormously high, including the survival of the nation."

Mr. Halperin argued in favor of seeking to change national security procedures through the legislative process, because this "forces a public debate."

Mr. Halperin said that experience with the legislative process over the past 10 years has demonstrated that national security legislation, in order to be approved, requires the support of three non-congressional components. "It requires the support of the intelligence agencies concerned. It requires the support of the president. And it requires the support of the civil liberties community....If any one of those three things is lacking, the Congress simply will not act."

Mr. Halperin argued strongly for the development of charters for the intelligence agencies. He said that the movement toward the institutionalization of the acceptance of the legitimacy of national security concerns and civil liberties concerns in the national security area requires legislative charters for the intelligence agency. He said he thought the Reagan administration was wrong in opposing the imposition of such charters. "I think the intelligence agencies themselves benefit from having clearly defined rules which, among other things, give the intelligence community the possibility of saying no to the president on the grounds that Congress has told them not to do something."

He was strongly critical of the warrantless searches which are permitted in national security cases. He said that he found it "outrageous, dangerous and incomprehensible...that the attorney general of the United States may order the FBI to break into our houses in the middle of the night, photograph our papers, and leave no trace, without a judicial warrant because the attorney general, on the basis of a secret definition of agent of a foreign power, decides that we are agents of a foreign power." He said that he thought this procedure was clearly unconstitutional, and he thought Congress ought to stop it.

Mr. Halperin also argued strongly against the denial of visas to people who want to come to the United States. As an example, he mentioned denial of the visa to a retired Italian general, a former member of the Italian Senate, who had during his military career served for seven years on the Military Standing Committee of NATO in the Pentagon. The Italian general in question was invited to the United States for the purpose of addressing a Boston meeting to protest the deployment of intermediate range missiles in Europe. The official reason for not granting a visa was that his coming to the United States was prejudicial to the national interest. It would be hard, said Mr. Halperin, to find a clearer case of violation of first amendment principles.

Similarly, Mr. Halperin argued that there should be no restriction on "the right of Americans to export ideas which may be lawfully circulated without restriction within the United States." The administration, he said, should not have the power to deny the right of Americans to travel abroad, except in the narrow circumstances which Congress has already laid out in the Passport Control Act.

National security considerations, said Mr. Halperin, have over the past 20 years imposed a series of restrictions on civil liberties. The balance, he said, has clearly not yet been achieved.

Book Review

By David Martin

The History and Impact of Marxist-Leninist Organizational Theory by John P. Roche, Institute for Foreign Policy Analysis, Inc., Central Plaza Building, Tenth Floor, 675 Massachusetts Avenue, Cambridge, MA 02139, $7.50.

John Roche is the academic dean, and professor of civilization and foreign affairs, at The Fletcher School of Law and Diplomacy, Tufts University. He is one of those rare intellectuals who combines a life-time of study of political affairs, especially of the phenomenon of Marxism-Leninism, with a rich personal political experience in coping with Marxist-Leninist organizational techniques. The primary lesson he has drawn from this experience can be summed up in the words, "Don't listen to what they say. Watch their hands."

Emerging from college as a youthful Norman Thomas socialist, John Roche served from 1962 to 1965 as national chairman of Americans for Democratic Action, and from 1966 to 1968 as a special consultant to President Lyndon B. Johnson. Currently he is a member of the executive committees of the Coalition for a Democratic Majority and of the Committee on the Present Danger. He is also a member of the U.S. General Advisory Committee on Arms Control and Disarmament.

Mr. Roche is not one to be offended by the use of expressions like "evil empire" which, while harsh, correspond to the truth. About Marxism-Leninism, for example, he says it "is not a body of ideas designed to save the 'wretched of the earth' from poverty, oppression and imperialism. It is a cynical rationale for gangsterism." Nor is he one to turn a blind eye toward the folly and transgressions of the political right in writing about the blindness—yes, and stupidity—of the liberal and social democratic left. His exemplary even-handedness is apparent from two juxtaposed quotes from British Labor Party leader George Lansbury and Conservative Prime Minister Stanley Baldwin. Lansbury is quoted as saying in 1938, after interviewing Hitler: "I looked deeply into his eyes and was convinced of the man's sincerity when he said he desired peace most of all." On the opposite side, Prime Minister Baldwin is quoted as offering the following rationale for his opposition to rearmament in the 1935 general election: "Supposing I had gone to the country and said that Germany was rearming, and that we must rearm, does anybody think this peaceful democracy would have rallied to that cause at that moment? I cannot think of anything that would have made the loss of the election from my point of view more certain."

In this carefully documented work Roche presents an analytical history of Marxist-Leninist organizational theory and practice, beginning with the emergence of Lenin on the political scene to date. At one point Roche comments on Lenin's organizational genius that when they were first confronted with Lenin the Russian Social Democrats in exile did not know what had hit them. Alas! There are many in the free world today who are just as blind and just as helpless in coping with the decades' old techniques of Marxist-Leninist organizational theory.

According to Roche, Lenin applied the rules of military organizations laid down by Von Clausewitz to the realm of political organization. He demanded absolute discipline, in which each layer of the heirarchy was subordinate to the layer which came above it. The dictatorial implications of his organizational theory roused the suspicions and even the ire of some of the other Russian Socialists. Trotsky, for example, criticized the implications of Lenin's organizational theory in the following prophetic words: "The organization of the Party takes the place of the Party itself; the Central Committee takes the place of the organization; and finally the dictator takes the place of the Central Committee." This, notes Roche, was an accurate description of Lenin's "democratic centralism."

To the requirement for iron discipline, Lenin added a body of teachings on the importance of infiltrating and colonizing other organizations, as well as the state apparatus. To those British militants, for example, who balked at his urging that they subordinate themselves to the Labor Party, whom they despised as "social patriots," Lenin replied that their support would be analogous to the way "the rope supports the hanged man."

The injunction to infiltrate and colonize was supplemented by the launching of a whole series of communist fronts in all the Western countries. This policy did not reach full flower until 1933 when Willi Munzenberg was placed in charge of it. Commenting on this *modus operandi* Roche said: "Willi would set up a *Zentrale*, a worldwide organization, and then national affiliates would be formed. Thus...the World Committee Against War and Fascism spawned the American League Against War and Fascism and perhaps 25 other clones. Similarly, his Committee for War Relief for Republican Spain had numerous progeny....As Koestler noted, Willi produced committees as a conjurer produces rabbits out of a hat."

At one point, when the Labor Party listed 25 communist front groups, it was accused by the liberal element of "witch hunting." To this Foreign Secretary Ernest Bevin replied: "There never were witches—but Commie bastards have been around for 30 years."

Fortunately, the left has not had things entirely its own way. In the '60s, for example, the liberals had a virtual monopoly on Political Action Committees (PACs). Today this organizational technique has been

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taken over and employed with devastating effect by American conservatives.

"By the time of Stalin's death in 1953," writes Roche, "Marxist-Leninist techniques of organization were as rigidly stylized as classical Russian ballet. When the ballet director issued the script, the cadres went into action, 'transmission belts' whined, and 'innocents' clubs' popped up like mushrooms devoted to 'Saving the Rosenbergs' or 'Hands off Cuba' or 'Recognize the NLF,' (or PLO, or Sandinistas, or East Timor Liberation Movement, in recent years)."

"The History and Impact of Marxist-Leninist Organizational Theory" is a real *tour de force*. It is difficult to believe that so much interesting historical information, much of it not widely known, has been crowded into a brochure of less than 75 pages—all the more difficult to believe because the style is light and the historical facts so organized that they appear to flow together. Those who are endeavoring to understand the nature of the enemy with which we must contend internationally would do well to place this work at the top of their reading list.

Court Protects CIA Files

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> exist. An affidavit prepared by Louis J. Dube, the Information Review Officer for the Directorate of Operations of the CIA, set forth the CIA's reasons for feeling the national security would be threatened. These reasons fall into seven broad categories: 1) disclosure now might prevent foreign countries from participating in future covert missions, 2) disclosure might hamper future relations with Albania, 3) a pattern of denials or affirmances would permit hostile nations to piece together a "catalog" of U.S. covert missions, 4) denial or affirmance would enable the Soviet Union to ascertain the reliability of its double agent, Kim Philby, 5) acknowledgement could jeopardize sources and sympathizers still within Albania, 6) acknowledgement could hamper future recruitment of sources, and 7) acknowledgement would reveal the particular intelligence method—infiltration of agents—allegedly used in the mission....
>
> Courts are required to grant the same deference to agency determinations of whether the national security could be injured as they grant to classification decisions. The thrust of the inquiry varies slightly, however, in that it depends less on the content of specific documents than the other exemptions do.
>
> The CIA argues that it would reveal "intelligence sources or methods" if it acknowledged the existence of the Albanian program. The Dube affidavit identified three possible ways that acknowledging that the document exists could jeopardize confidentiality of intelligence sources or methods: by providing the critical confirmation which would allow Albanian leaders to identify participants in the covert action; by damaging future CIA efforts to recruit sources; and by revealing how, where and when the CIA has deployed its resources.
>
> Again, the courts are obliged to accord substantial weight to the agency affidavit. An official confirmation that the CIA participated in the covert action would reveal how the CIA has deployed its resources in the past, and would deter potential future sources from cooperating. Judge Green correctly found in her de novo review that the CIA had met its burden.

The appellant, in addition, requested that access be granted based on an "historical research access." The court responded as follows:

> Miller also argues that the CIA should have granted him "historical research access" to such files as would aid him in his research on Albania. Miller concedes that the CIA has no statutory duty to provide such access, but argues that in promulgating the regulation allowing historical research the CIA fettered its discretion.
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> We hold that the CIA's decision to deny Miller research access to properly classified material cannot be reviewed by this court. The statutory mandate running to the CIA is clear: the CIA must not divulge information which would reveal intelligence sources and methods. Rather than departing from the statutory mandate, the regulations promulgated by the CIA reinforce it. The regulations set minimum standards which must be met before a historical research request can be considered. After the threshold standards are met, the director of the CIA can exercise his or her own discretion in deciding whether to grant access.

Larry Williams

In Memoriam

Admiral Eddie Layton, intelligence officer to Admiral Nimitz in the Pacific who predicted the Japanese advance on Midway and was in large measure responsible for the favorable result, died suddenly on April 14. He was an avid reader of this publication and the intelligence community mourns his passing.

Dilemma of Chemical And Biological Warfare

The Standing Committee on Law and National Security on May 14, at its final breakfast in the 1983-84 series, heard Mr. Stuart J.D. Schwartzstein speak on the threat of chemical and biological warfare and the draft treaty filed by Vice President Bush at the United Nations conference in Geneva in April of this year. Mr. Schwartzstein, a former foreign service officer, is a noted expert in the field and has visited Southeast Asia and attended numerous conferences on the subject. He is currently serving as a senior fellow at the National Strategy Information Center.

Mr. Schwartzstein began his remarks by noting that the subject of chemical weapons was not a popular one and certainly not one that many people were courageous enough to contemplate over breakfast. The general lack of interest and general repugnance of the subject is an important factor: it has framed the issue in several ways. Additionally, Mr. Schwartzstein said that, on the one hand, there is a strong desire on the part of most people, including the military (at least in the United States), to get rid of chemical weapons and, on the other hand, an enormous difficulty in dealing with the issues in a realistic and effective manner.

He then outlined three broad areas of concern that exist at this time: First, the current international legal regime governing chemical and biological weapons and negotiations underway to both broaden and strengthen that regime; second, the deterrent capability inherent in U.S. stockpiles of chemical weapons which could be used to retaliate in kind should chemical or biological weapons be used against this country or our allies; and third, the problem of instances where chemical weapons have been used in Southeast Asia, Afghanistan, and, most recently, the Iran-Iraq theater.

Mr. Schwartzstein also noted that it was extremely important to make a basic distinction between arms control agreements governing such weapons (or other types of weapons) and the reality of their use. He pointed out that frequently there seems to be a curious confusion between what may exist on paper or what is being negotiated in Geneva and what is actually happening on the ground. He cited a Yale biochemist, Harold Morowitz, who diagnosed a "schizophrenia of paperwork" wherein schizophrenia is defined as a "psychological disturbance involving confusion between what is real and what is imaginary." According to Morowitz, this disturbance can be illustrated by the case of the building superintendent who has a water leak reported to him. He fills out a request for a plumber to fix the leak and then acts (and thinks) as if the leak has in fact been fixed. Mr. Schwartzstein said that there seem to be many people who see the 1925 Geneva Protocol and the 1972 Biological and Toxic Weapons Convention the way the building superintendent viewed the problem without considering the reality.

What is truly important, Mr. Schwartzstein went on to say, is that agreements on chemical weapons be verifiable, and that solid evidence be made available to contracting parties that the terms of any agreement on chemical weapons be fulfilled. Without that there can be no confidence in an agreement unless one is unfortunately afflicted with a "schizophrenia of paperwork." The U.S. proposals for a complete ban on chemical weapons, tabled in April in Geneva by Vice President Bush, address this with important provisions for verification of compliance including monitoring destruction and "open invitation" inspections. Unlike the 1972 Biological Weapons Convention, it does not depend on faith, verbal assurances, or assumptions. Without such provisions for verification, no agreement is likely either to be effective or to deal with the problems in a way that is durable. While it is not probable that the U.S. proposals will be accepted without change—and no one has viewed them as a final document—it is unlikely that the basic position of the United States will change, even though a considerable amount of negotiating will be necessary before an agreement is acceptable to all parties, particularly the Soviet Union. The Soviet response to date, unfortunately, has not been encouraging.

Meanwhile, Mr. Schwartzstein warned, we must continue to concern ourselves with what is actually happening, including the recent violations of existing agreements on chemical weapons in Laos, Cambodia, Afghanistan, and the Iran-Iraq theater. He noted that having spent nearly three years working on the issue of chemical weapons use, both in and out of government, he had no choice but to conclude that the findings of use made public by the U.S. government were correct and that the Soviets and their Vietnamese clients were indeed guilty of use of chemical and toxic weapons in Southeast Asia. He said that he had carefully considered alternative hypotheses, including that it might be simply a matter of bee feces, but that the evidence was overwhelming despite past problems in investigation and analysis.

Unfortunately, Mr. Schwartzstein said, there were many people who had not been willing to face up to the reality or who have not wanted to deal with the problem at all, and these attitudes have made it all the easier for violations to go unpunished. It should not have been surprising, therefore, that Iraq resorted to the use of chemical weapons after viewing the weak international response to Soviet violations. Without real international outrage there is no real political price being paid for the disregard of international law, and the proliferation of chemical weapons use is likely to continue and indeed escalate, particularly against those countries or people least able to defend themselves.

U.S. Observer Delegation Reports Salvadoran Election Fair

By arrangement with the government of El Salvador, the U.S. sent a 24-man delegation to observe and report on the recent presidential run-off elections in that country on May 6. The delegation included 10 members of Congress and 14 private sector observers. The delegation was co-chaired by Senator John H. Chafee (R-R.I.), Ambassador Max M. Kampelman, and Representative G.V. (Sonny) Montgomery (D-Miss.). (John Norton Moore, chairman of the Standing Committee on Law and National Security, was one of the private sector observers.) The text of the report of the observer delegation follows.

> The official United States delegations have witnessed three elections in El Salvador in 26 months. It is our consensus that this election was fair and honest, and that it provided a clear and undeniable mandate to whichever candidate is elected to begin to grapple with the manifold problems that confront this country after five years of turmoil and unrest.
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> The citizens of El Salvador turned out in large numbers to vote for a president. In spite of hot sun, long lines and occasional foul-ups, the spirit of the day was festive and good humored. Voters were determined to cast their votes, even when that meant standing in line for hours.
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> Voters in line repeatedly expressed their conviction that they had both a right and a duty to vote and to make their own choice. In some areas, the vote took place in spite of guerrilla attacks on municipal installations, attempts to mine roads leading to voting places, and thefts of identification cards. Most of the country was deprived of electricity, and final vote counts were often made by candlelight. The delegation did not find evidence that voters feared the consequences of not voting. People voted because they chose to exercise their franchise, and not out of any fear—either of the guerrillas or of government fines for not casting a ballot.
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> The delegation congratulates the Salvadoran military for its neutrality in this election. The military declared its intention to remain out of the electoral process; to defend ballots and the people's right to vote. Soldiers did not interfere in the voting. While they were present and visible in numbers at the polling places, they remained aloof. Several officers took concrete steps to ensure that civilian officials were called to resolve problems.
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> The delegation congratulates the Salvadoran Central Elections Commission, the departmental and municipal elections officials and those who presided at individual polling tables for the smooth, orderly and professional manner in which the elections were conducted. The election officials demonstrated remarkable ability to cope with problems and to make on-the-spot decisions that made the voting run more smoothly and efficiently. El Salvador's growing experience with the electoral process is evident in the smooth and capable way in which the voting was conducted across the country.
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> The logistical problems that caused difficulties in the March 25 elections were, for the most part, overcome. After a heated campaign over the past month, representatives of both parties worked side by side to conduct a fair and honest election. Their rivalry was not always forgotten, however, and at some sites, there were complaints of overzealous electioneering.
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> We are impressed that once again the Salvadoran people have made clear their motives for participating in the electoral process. Voters of all ages and in all parts of the country declared to us that they voted for peace and for an end to the violence and misery that the country has suffered in the past several years. We believe the vote to be an overwhelming repudiation of the guerrillas.
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> When all is said and done, the strong message of this election is that the Salvadoran people have declared their own political solution to the crisis that challenges this country. Three successful elections in two years are a clear repudiation of the insurgency. The people of this country have declared themselves in favor of the democratic process. The delegation calls upon all Salvadorans, including members of the armed opposition, to heed the message of this election. It also calls upon fellow Americans and all members of the international community to provide increased support for the democratically elected government of El Salvador.